

SUBCHAPTER S : MACKENZIE RESERVOIR

§284.421. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Authority - The MacKenzie Municipal Water Authority.

Commission - The Texas Water Commission.

Holding tank - A vented, watertight tank designed for temporary holding of sewage and so constructed as to prevent the removal of the sewage except by pumping therefrom, for delivery to an approved sewage disposal system.

Mackenzie Reservoir - The lake on Tule Creek in Briscoe and Swisher Counties, approximately 12 miles northwest of the City of Silverton.

msl - An abbreviation for mean sea level.

Organized disposal system - Any public or private system for the collection, treatment, and disposal of sewage operated in accordance with the terms and conditions of a permit from the Texas Water Commission.

Private sewage facility - All facilities, systems, and methods used for the disposal of sewage other than disposal systems operated under a permit issued by the Texas Water Commission.

Sewage - Waste that is primarily organic and biodegradable or decomposable and that generally originates as human, animal, or plant waste from certain activities, including using toilet facilities, washing, bathing, and preparing food.

Standards - The standards set forth in the pamphlet entitled "Construction Standards for On-Site Sewerage Facilities" and all future amendments thereto, which were adopted by the Texas Board of Health, pursuant to Texas Civil Statutes, Article 4477-1, as Texas Department of Health rules, 25 TAC §§301.11-301.17 (relating to Construction Standards for On-Site Sewerage Facilities), effective January 1, 1988.

Subdivision -

(A) A subdivision which has been platted and recorded with the county clerk of the county or counties in which the land lies, or which is required by statute to be so platted and recorded; or

(B) any four or more adjoining lots or tracts, each of which is less than two acres in size.

§284.422. Regulated Area.

The regulated area is the area for which provisions of this subchapter apply. This area is defined as all the area in Mackenzie Reservoir Watershed bounded by a line with all points on that line being a distance of 1,500 feet from the nearest point on the 3,120-foot msl contour line, measured horizontally away from the reservoir. The regulated area also includes all the area of the lake bed to the 3,120-foot msl contour line, and all islands.

§284.423. Discharge of Sewage Within the Regulated Area.

All sewage disposal within the regulated area shall be in accordance with one of the following types of authorization:

- (1) sewage discharged into an organized waste disposal system or other facility operating under a valid permit issued by the Texas Water Commission; or
- (2) sewage discharged into private sewage facilities licensed in accordance with the regulations contained in this subchapter; or, sewage discharged into an alternative type of private sewage facility which meets the standards of the Texas Department of Health and is licensed by the authority.

§284.424. Licensing Functions.

The Mackenzie Municipal Water Authority is designated by the Texas Water Commission to perform all licensing functions of this subchapter. The authority shall have the power:

- (1) to make reasonable inspections of all private sewage facilities located or to be located within the area covered by this subchapter; and
- (2) to perform all the duties necessary to meet the requirements of this subchapter.

§284.425. Licensing Requirements for New Private Sewage Facilities.

(a) Private sewage facilities installed after the effective date of this subchapter, or private sewage facilities which are substantially or materially altered, and are to be located within the boundaries of the regulated area, must meet the following requirements.

- (1) A license must be obtained for the construction of these facilities from the authority.
- (2) The lot or tract which the private sewage facilities will serve must be at least the size required by the latest edition of the "Standards."

(b) All private sewage facilities to be installed or constructed after the effective date of this subchapter shall conform to the minimum standards for private sewage facilities as set out by the Texas Department of Health.

(c) The following shall apply to new private sewage facilities.

- (1) Any license issued under the authority of this subchapter will be transferred to a succeeding owner and such license will continue in existence, provided the new owner applies to the authority and provided there is no significant change in the amount or quality of sewage to be placed in the private sewage facility. The authority will charge a transfer fee whenever a license is transferred to a succeeding owner.

(2) Application forms for licenses may be obtained from the authority. In order to initiate an application, a completed application form together with the appropriate fee shall be filed with the authority.

(3) The authority will cause to be performed such inspections and tests as may be deemed necessary as soon as practicable.

(4) Upon a finding by the authority that use of the private sewage facility will not cause pollution or injury to the public health and is not in conflict with the terms and regulations of this subchapter, a license will be issued.

(5) Upon a finding by the authority that the private sewage facility will not be licensed, the applicant shall be notified in writing of that finding and of the nature of the defects which prevent licensing.

§284.426. Approval of Subdivision Plans for Private Sewage Facilities.

(a) Any developer or other interested person desiring to create a subdivision using private sewage facilities must obtain approval from the authority of his plan for sewage disposal. He or she must fulfill the following requirements.

(1) A plat of the proposed subdivision must be filed with, approved by, and recorded by the county commissioners court of the county in which it is located.

(2) An application for approval of the subdivision sewage disposal plan and appropriate filing fee shall be submitted to the authority.

(3) The developer shall inform each prospective buyer:

(A) that the subdivision is subject to all of the terms and conditions of this subchapter;

(B) that a license will be required for any private sewage facility constructed in the subdivision; and

(C) that a sewage disposal plan has been filed for the subdivision and that the areas suitable for private sewage facilities have been defined.

(4) If investigation pursuant to this section reveals that a lot is not suitable for use of private sewage facilities, the prospective buyer shall be so notified.

(b) The authority will cause to be prepared a percolation test profile of the entire subdivision, consisting of percolation tests of a representative number of proposed lots or tracts (as determined and approved by the authority) to determine whether the subdivision can be served with private sewage facilities, such tests to be at the expense of the developer.

(c) By directions of the authority, all or part of the tests may be performed by an engineering firm or soils testing laboratory approved by the authority. The authority will notify the developer of the findings of its examination and will point out any deficiencies in the plan for sewage disposal. Specifically, the authority will notify the developer of any areas not suitable for use of private sewage facilities and whether the proposed developmental density is consistent with the use of private sewage facilities. Approval of a subdivision plan for sewage disposal does not constitute a license for a specific private sewage facility. An approved plan is, however, a prerequisite for obtaining a private sewage facility license in a subdivision.

§284.427. Existing Private Sewage Facilities.

(a) All private sewage facilities existing within the regulated area prior to February 28, 1978, are not required to be licensed provided the facility is not causing pollution or threat to public health and the facility has not been substantially modified.

(b) All licenses issued for private sewage facilities, pursuant to Texas Department of Water Resources rules (§§371.81-371.94 of this title (relating to Mackenzie Reservoir)), which are replaced by this subchapter, shall remain in effect for the term stated on the license as if issued pursuant to this subchapter.

(c) If a private sewage facility existing within the regulated area prior to February 28, 1978, is found to be malfunctioning or is substantially modified, the authority may require licensing in accordance with §284.425 of this title (relating to Licensing Requirements for New Private Sewage Facilities).

§284.428. Connection of Private Sewage Facilities to Organized Waste Collection, Treatment, and Disposal Systems.

In order to implement the stated policy of the legislature and the commission that the development and use by interested and affected parties of organized waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state should be encouraged, the Texas Water Commission makes the following requirements.

(1) No license shall be issued for any private sewage facility when any part of the facility is closer than 300 feet in horizontal distance to an organized waste collection, treatment, and disposal system capable of serving in lieu thereof; rather, the facility shall be connected to the organized system whenever feasible and legally possible.

(2) Whenever an organized system with service capability is developed within 300 feet in horizontal distance from any part of a private sewage facility, that facility shall be connected to the organized system whenever feasible and legally possible.

§284.429. Terms and Conditions for Granting Exceptions.

The Texas Water Commission intends that the regulations contained in this subchapter shall be strictly enforced but realizes that certain individual situations may require the granting of an exception to the requirements contained in the subchapter so that hardships may be avoided. Therefore, the following terms and conditions are established.

(1) Any person desiring an exception shall file an application with the authority for its analyses of the specifics of the situation.

(2) The authority shall review the application and issue a statement either granting or denying the application. When an application is denied, the statement shall set out the reasons for the authority's decision and may also set out what constructive measures, if any, should be undertaken to obtain licensure.

§284.430. Terms and Conditions for Appeal.

(a) The commission intends that any disputes concerning the application of this subchapter to individual situations be negotiated to conclusion between the licensing authority and the individuals involved, if possible. However, any person aggrieved by an action or decision of the licensing authority may appeal to the Texas Water Commission if the following terms and conditions of this subchapter have been met.

(1) All of the appropriate steps required by the aggrieved person by the terms and conditions of this subchapter have been met.

(2) The aggrieved person has made a conscientious effort to resolve his problems with the licensing authority.

(b) Appeal is properly made by the aggrieved party by filing a written statement stating with specificity the nature of the grievance. This statement is to be filed with the executive director of the commission who will then cause notice of the appeal to be issued to the licensing authority. The executive director will then forward the appeal to the Texas Water Commission for its consideration.

§284.431. Fees.

License fees will be in accordance with §284.434 of this title (relating to Fee Schedule). These fees shall be paid to and collected by the authority so long as the authority is delegated the licensing function and the administration of the licensing system functions specified in this subchapter. The establishment of the fee schedule does not impair or prohibit the imposition of reasonable charges by the authority for special services performed by the authority at the request of the applicant in connection with presentation of an application and the required data. Percolation tests and other examinations will be performed by engineering firms or soil testing laboratories approved by the authority.

§284.432. Enforcement.

(a) Criminal penalty, Texas Water Code, §26.214.

(1) A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each day that a violation occurs constitutes a separate offense.

(2) Jurisdiction for prosecution of a suit under this section is in the justice of the peace courts.

(3) Venue for prosecution of a suit under this section is in the justice of the peace precinct in which the violation is alleged to have occurred.

(b) Civil penalty. A person who violates any provision of this subchapter is subject to an injunction by court order and to a civil penalty for each act of violation and for each day of violation, to be recovered as provided in the Texas Water Code, Chapter 26.

§284.433. Severability Clause.

If any provision of this subchapter or the application thereof to any person or circumstance is held invalid the validity of the remainder of the subchapter and of the application of such provision to other persons and circumstances shall not be affected thereby.

§284.434. Fee Schedule.

The authority shall establish a fee schedule for the private sewage facilities regulatory program around Mackenzie Reservoir and maintain a copy of such fee schedule at the authority's offices for inspection by the public. Such fee schedule shall set reasonable fees for services performed by or at the direction of the authority and may, subject to applicable laws, be amended by the authority from time to time.